



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 30, 1998

Ms. Linda Wiegman  
Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR98-0294

Dear Ms. Wiegman:

You ask this office to clarify our ruling in Open Records Letter No. 97-2414 (1997). Your request was assigned ID# 112207.

The Texas Department of Health (the "department") received a request for information relating to the investigation of a complaint made against a psychiatric care facility licensed by the department. In Open Records Letter No. 97-2414 (1997), this office concluded that federal regulations require the department to release the HCFA 2567 statements of deficiencies and plans of correction, provided that (1) no information identifying individual patients, physicians, other medical practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had a reasonable opportunity to review the report and to offer comments. *See* 42 C.F.R. §§ 401.126, .133; Open Records Decision No. 487 (1988) at 5. You state that the department assumes that information on the HCFA 2567 obtained from medical records must be withheld pursuant to state law. You ask whether a patient's diagnosis or medical condition specifically identifies the patient to a certain extent, and thus ask whether the medical information should be redacted from the HCFA 2567 form.

We have reviewed your arguments for withholding the information. As we have concluded in several previous rulings to the department, we believe that federal law requires the department to release deidentified HCFA 2567 documents. *See* Open Records Letter Nos. 1514 (1997), 1492 (1997), 1472 (1997), 1388 (1997), 1230 (1997). In most instances, we do not believe that a patient's medical condition or diagnosis identifies that patient when the name is redacted from the HCFA form. As federal provisions govern the public

disclosure of the HCFA 2567 forms, we believe that the federal law prevails to the extent it may conflict with the Texas Medical Practice Act regarding information obtained from medical records. *See English v. General Electric Co.*, 110 S.Ct. 2270, 2275 (1990) (state law preempted to extent it actually conflicts with federal law). Furthermore, we believe the deidentification required by federal law is sufficient to protect the privacy interests of the patients.

We, therefore, affirm Open Records Letter No. 97-2414 (1997). If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Loretta DeHay". The signature is fluid and cursive, with the first name "Loretta" being more prominent than the last name "DeHay".

Loretta R. DeHay  
Deputy Chief  
Open Records Division

LRD/rho

Ref.: ID# 112207

Enclosures: Submitted documents

cc: Ms. Annah N. Hardin  
139 Main Street, #4  
Brattleboro, Vermont 05301  
(w/o enclosures)